	Case 2:99-cr-00433-WBS-AC Documen	t 1753 Filed 10/06/16 Page 1 of 2
1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
10		
11	UNITED STATES OF AMERICA,	No. 2:99-cr-0433 WBS AC
12	Respondent,	
13	v.	<u>ORDER</u>
14	SON VAN NGUYEN,	
15	Movant.	
16		I
17	Respondent moves to stay this habeas action filed pursuant to 28 U.S.C. § 2255, pending a	
18	decision in the Ninth Circuit that may impact the merits of this case, on the ground that a stay will	
19	conserve government resources. Respondent seeks a stay until decisions are rendered by the	
20	Ninth Circuit in the consolidated appeals involving movant's codefendants, <u>United States v. Minh</u>	
21	Huynh, et al., C.A. No. 16-10078, and United States v. John That Luong, C.A. No. 16-10220.	
22	The consolidated appeals may impact movant's claims premised on <u>Johnson v. United States</u> , 135	
23	S. Ct. 2551 (2015). Respondent alternatively requests an extension of time until January 31,	
24	2017, to file its answer to movant's § 2255 motion. ECF No. 1742. In its reply in support of the	
25	motion, respondent raises new arguments regarding additional cases pending in Ninth Circuit and	
26	United States Supreme Court as reasons to stay this action or extend its deadline to respond. ECF	
27	No. 1746. Movant opposes the motion (ECF No. 1743) and moves to strike respondent's reply	
28	on the ground that it is untimely and presents new arguments (ECF No. 1747).	
		1
•		

## Case 2:99-cr-00433-WBS-AC Document 1753 Filed 10/06/16 Page 2 of 2 Respondent's request appears to be premised on the inherent authority of this court to

control its docket in the interests of efficiency and fairness. However, in light of the several

"Johnson cases" currently being decided by the judges of this court, the undersigned finds it most
fair, practical, and efficient to proceed on the merits of each such case in the order that it is filed.

Because the court is denying the motion for stay or extension, and because it is not clear that Local Rule 430.1 applies to post-conviction motions such as this one, movant's motion to strike will be denied.

Accordingly, IT IS HEREBY ORDERED that:

- 1. Respondent's request that the court stay this action or alternatively extend the deadline to file an answer to January 31, 2017 (ECF No. 1742), is denied.
- 2. Within thirty days after the filing date of this order, respondent shall file and serve an answer to movant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (ECF No. 1725). Respondent shall include with the answer any and all transcripts or other documents relevant to the determination of the issues presented in the motion. <u>See</u> Rule 5, Rules Governing Section 2255 Proceedings.
- 3. Within thirty days after the filing date of respondent's answer, movant may file a traverse.
  - 4. Movant's motion to strike (ECF No. 1747) is denied.

19 DATED: October 6, 2016

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE